



REPUBLIC OF THE PHILIPPINES

Supreme Court

Manila

SECOND DIVISION

June 30, 1987

G.R. No. 73893**MARGARITA SURIA AND GRACIA R. JOVEN**, petitioners,

vs.

HON. INTERMEDIATE APPELLATE COURT, HON. JOSE MAR GARCIA (Presiding Judge of the RTC of Laguna, Branch XXIV, Biñan, Laguna), and **SPOUSES HERMINIO A. CRISPIN and NATIVIDAD C. CRISPIN**, respondents.*De Castro & Cagampang Law Offices for petitioners.**Nelson A. Loyola for private respondents.***RESOLUTION****GUTIERREZ, JR., J.:**

This is a petition for review on certiorari of the decision of the Court of Appeals dismissing for lack of merit the petition for certiorari filed therein.

As factual background, we quote from the Court of Appeals' decision:

The factual and procedural antecedents of this case may be briefly stated as follows:

On June 20, 1983, private-respondents filed a complaint before the Regional Trial Court of Laguna, Branch XXIV, for rescission of contract and damages, alleging among others:

1. x x x

2. That on March 31, 1975, plaintiffs being the owners of a parcel of land situated at Barrio San Antonio, San Pedro, Laguna, entered into a contract denominated as DEED OF SALE WITH MORTGAGE, with herein defendants, a true copy of said contract (which is made an integral part hereof) is hereto attached as ANNEX "A":

3. x x x

4. That the defendants violated the terms and conditions of the contract by failing to pay the stipulated installments and in fact only one installment due in July 1975 (paid very late in the month of September, 1975) was made all the others remaining unsettled to the present time;

5. That repeated verbal and written demands were made by plaintiff upon the defendants for the payment of the installments, some of said written demands having been made on September 24, 1981, February 7, 1982, February 24, 1983, March 13, 1983, and April 12, 1983, but defendants for no justifiable reason failed to comply with the demands of plaintiffs;

6. x x x

On November 14, 1983, petitioners filed their answer with counterclaim.

On July 16, 1984, petitioners filed a motion to disniiss complaint, alleging that:

1. That plaintiffs are not entitled to the *subsidiary* remedy of rescission because of the presence of remedy of foreclosure *in the Deed of Sale with Mortgage* (Annex "A", Complaint);
2. That, assuming *arguendo* that rescission were a proper remedy, it is apparent in the face of the Complaint that the plaintiffs failed to comply with the requirements of law, hence the rescission was ineffective, illegal, null and void, and invalid.

On July 26, 1984, private-respondents filed their opposition to the above motion.

In the meantime, on August 6, 1984, petitioners formerly offered to pay private-respondents all the outstanding balance under the Deed of Sale with Mortgage, which offer was rejected by private respondents on August 7, 1984.

On November 26, 1984, the respondent-Court denied the motion to dismiss. The order reads:

Defendants through counsel filed a Second Motion to Dismiss dated July 24, 1984 based on an affirmative defense raised in their answer, that is, that the complaint fails to state a cause of action for rescission against defendants because (1) — plaintiffs are not entitled to the subsidiary remedy of rescission because of the presence of the remedy of foreclosure in the Deed of Sale with Mortgage (Annex "A", Complaint) and (2) — assuming *arguendo* that rescission were a proper remedy, it is apparent from the face of the Complaint that the plaintiffs failed to comply with the requirements of law, hence the rescission was ineffective, illegal, null and void, and invalid.

After a careful perusal of the allegations of the complaint considered in the light of existing applicable law and jurisprudence touching on the matters in issue, and mindful of the settled rule that in a motion to dismiss grounded on lack of cause of action the allegations of the complaint must be assumed to be true, the Court finds and holds that the motion to dismiss dated July 24, 1984 filed by defendants lacks merit and therefore denied the same.

SO ORDERED.

On January 31, 1985, petitioners filed a motion for reconsideration to which private-respondents filed their opposition on February 11, 1985. On February 19, 1985, petitioners filed their reply.

On March 13, 1985, the respondent-Court denied the motion for reconsideration. The order reads in part:

x x x x x x x x x

Perusing the grounds invoked by the defendants in their Motion for Reconsideration and Reply as well as the objections raised by plaintiffs in their opposition, and it appearing that in its Order dated November 26, 1984, the Court has sufficiently, althou (sic) succinctly stated its reason for denying the motion to dismiss dated July 16, 1984, that is, for lack of merit, the Court finds no overriding reason or justification from the grounds invoked in the said Motion for Reconsideration for it to reconsider, change, modify, or set aside its Order dated November 26, 1984. The Court still believes that the two (2) grounds invoked by defendants in their Motion to Dismiss dated July 16, 1984 are not meritorious when considered in the light of prevailing law and jurisprudence and the hypothetically admitted allegations of the complaint, and for that reason it denied the motion to dismiss in its said order of November 26, 1984.

The instant Motion for Reconsideration is therefore denied for lack of merit. (Pp, 29-32, Rollo)

The questions raised by petitioner are as follows:

I

IN A DEED OF SALE, WHICH IS COUPLED WITH A MORTGAGE TO SECURE PAYMENT OF THE BALANCE OF THE PURCHASE PRICE, MAY THE SELLER RESORT TO THE REMEDY OF RESCISSION UNDER ARTICLE 1191 OF THE CIVIL CODE WHICH PROVIDES FOR THE SUBSIDIARY AND EQUITABLE REMEDY OF RESCISSION IN CASE OF BREACH OF RECIPROCAL OBLIGATIONS?

Otherwise stated,

IS THE SUBSIDIARY AND EQUITABLE REMEDY OF RESCISSION AVAILABLE IN THE PRESENCE OF A REMEDY OF FORECLOSURE IN THE LIGHT OF THE EXPRESS PROVISION OF ARTICLE 1383 OF THE CIVIL CODE THAT: 'THE ACTION FOR RESCISSION IS SUBSIDIARY; IT CANNOT BE INSTITUTED

EXCEPT WHEN THE PARTY SUFFERING DAMAGE HAS NO OTHER LEGAL MEANS TO OBTAIN REPARATION FOR THE SAME?

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II

MAY THE SELLER LEGALLY DEMAND RESCISSION OF THE DEED OF SALE WITH MORTGAGE WITHOUT OFFERING TO RESTORE TO THE BUYER WHAT HE HAS PAID, AS REQUIRED BY ARTICLE 1385, OR COMPLYING WITH THE REQUIREMENTS OF THE MACEDA LAW (REPUBLIC ACT 6552) GRANTING THE BUYER A GRACE PERIOD TO PAY WITHOUT INTEREST, AND, IN CASE OF CANCELLATION IN CASE THE BUYER STILL COULD NOT PAY WITHIN THE GRACE PERIOD, REQUIRING THE SELLER TO ORDER PAYMENT OF THE CASH SURRENDER VALUE BEFORE THE CANCELLATION MAY LEGALLY TAKE EFFECT (SEC. 3[b], LAST PAR., REP. ACT 6552)?

The petition was denied in a minute resolution on June 13, 1986 but was given due course on September 29, 1986 on a motion for reconsideration.

The petition is impressed with merit.

The respondent court rejected the petitioners' reliance on paragraph (H) of the contract which grants to the vendors mortgagees the right to foreclose "in the event of the failure of the vendees-mortgagors to comply with any provisions of this mortgage." According to the appellate court, this stipulation merely recognizes the right of the vendors to foreclose and realize on the mortgage but does not preclude them from availing of other remedies under the law, such as rescission of contract and damages under Articles 1191 and 1170 of the Civil Code in relation to Republic Act No. 6552.

The appellate court committed reversible error. As will be explained later, Art. 1191 on reciprocal obligations is not applicable under the facts of this case. Moreover, Art. 1383 of the Civil Code provides:

The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.

The concurring opinion of Justice J.B.L. Reyes in *Universal Food Corp. v. Court of Appeals* (33 SCRA 22) was cited by the appellate court.

In that case, Justice J.B.L. Reyes explained:

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... The rescission on account of breach of stipulations is not predicated on injury to economic interests of the party plaintiff but on the breach of faith by the defendant, that violates the reciprocity between the parties. It is not a subsidiary action, and Article 1191 may be scanned without disclosing anywhere that the action for rescission thereunder is subordinated to anything other than the culpable breach of his obligations by the defendant. This rescission is a principal action retaliatory in character, it being unjust that a party be held bound to fulfill his promises when the other violates his. As expressed in the old Latin aphorism: "*Non servanti fidem, non est fides servanda*," Hence, the reparation of damages for the breach is purely secondary.

On the contrary, in the rescission by reason of lesion or economic prejudice, the cause of action is subordinated to the existence of that prejudice, because it is the *raison d'être* as well as the measure of the right to rescind. Hence, where the defendant makes good the damages caused, the action cannot be maintained or continued, as expressly provided in Articles 1383 and 1384. But the operation of these two articles is limited to the cases of rescission for lesion enumerated in Article 1381 of the Civil Code of the Philippines, and does not apply to cases under Article 1191.

It is probable that the petitioner's confusion arose from the defective technique of the new Code that terms both instances as "rescission" without distinctions between them; unlike the previous Spanish Civil Code of 1889, that differentiated "resolution" for breach of stipulations from "rescission" by reason of lesion or damage. But the terminological vagueness does not justify confusing one case with the other, considering the patent difference in causes and results of either action.

According to the private respondents, the applicable law is Article 1191 of the Civil Code which provides:

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfilment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfilment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

There is no dispute that the parties entered into a contract of sale as distinguished from a contract to sell.

By the contract of sale, the vendor obligates himself to transfer the ownership of and to deliver a determinate thing to the buyer, who in turn, is obligated to pay a price certain in money or its equivalent (Art. 1458, Civil Code). From the respondents' own arguments, we note that they have fully complied with their part of the reciprocal obligation. As a matter of fact, they have already parted with the title as evidenced by the transfer certificate of title in the petitioners' name as of June 27, 1975.

The buyer, in turn, fulfilled his end of the bargain when he executed the deed of mortgage. The payments on an installment basis secured by the execution of a mortgage took the place of a cash payment. In other words, the relationship between the parties is no longer one of buyer and seller because the contract of sale has been perfected and consummated. It is already one of a mortgagor and a mortgagee. In consideration of the petitioners' promise to pay on installment basis the sum they owe the respondents, the latter have accepted the mortgage as security for the obligation.

The situation in this case is, therefore, different from that envisioned in the cited opinion of Justice J.B.L. Reyes. The petitioners' breach of obligations is not with respect to the perfected contract of sale but in the obligations created by the mortgage contract. The remedy of rescission is not a principal action retaliatory in character but becomes a subsidiary one which by law is available only in the absence of any other legal remedy. (Art. 1384, Civil Code).

Foreclosure here is not only a remedy accorded by law but, as earlier stated, is a specific provision found in the contract between the parties.

The petitioners are correct in citing this Court's ruling in *Villaruel v. Tan King* (43 Phil. 251) where we Stated:

At the outset it must be said that since the subject-matter of the sale in question is real property, it does not come strictly within the provisions of article 1124 of the Civil Code, but is rather subjected to the stipulations agreed upon by the contracting parties and to the provisions of Article 1504 of the Civil Code.

The "pacto comisorio" of "ley comisorio" is nothing more than a condition subsequent of the contract of purchase and sale. Considered carefully, it is the very condition subsequent that is always attached to all bilateral obligations according to article 1124; except that when applied to real property it is not within the scope of said article 1124, and it is subordinate to the stipulations made by the contracting parties and to the provisions of the article on which we are now commenting" (article 1504). (Manresa, Civil Code, volume 10, page 286, second edition.)

Now, in the contract of purchase and sale before us, the parties stipulated that the payment of the balance of one thousand pesos (P1,000) was guaranteed by the mortgage of the house that was sold. This agreement has the two-fold effect of acknowledging indisputably that the sale had been consummated, so much so that the vendee was disposing of it by mortgaging it to the vendor, and of waiving the *pacto comisorio*, that is, the resolution of the sale in the event of failure to pay the one thousand pesos (P1,000) such waiver being proved by the execution of the mortgage to guarantee the payment, and in accord therewith the vendor's adequate remedy, in case of nonpayment, is the foreclosure of such mortgage. (at pp. 255-256).

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There is, therefore, no cause for the resolution of the sale as prayed for by the plaintiff. His action, at all events, should have been one for the foreclosure of the mortgage, which is not the action brought in this case.

Article 1124 of the Civil Code, as we have seen, is not applicable to this case. Neither is the doctrine enunciated in the case of *Ocejo, Perez & Co. v. International Banking Corporation* (37 Phil. 631), which plaintiff alleges to be applicable, because that principle has reference to the sale of personal property. (at p. 257)

The petitioners have offered to pay au past due accounts. Considering the lower purchasing value of the peso in terms of prices of real estate today, the respondents are correct in stating they have suffered losses. However,

they are also to blame for trusting persons who could not or would not comply with their obligations in time. They could have foreclosed on the mortgage immediately when it fell due instead of waiting all these years while trying to enforce the wrong remedy.

WHEREFORE, the petition is hereby GRANTED. The Intermediate Appellate Court's decision dated November 8, 1985 and the resolution dated December 6, 1985 and February 28, 1986 are REVERSED and SET ASIDE. The petitioners are ordered to pay the balance of their indebtedness under the Deed of Absolute Sale with Mortgage with legal interests from the second installment due on October 24, 1975 until fully paid, failing which the respondents may resort to foreclosure.

SO ORDERED.

Fernan (Chairman), Paras, Padilla, Bidin and Cortes, JJ., concur.

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